88-896 (1)

Supreme Court, U.S.
FILED
NOV 4 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

EARLENE POLYAK

Appellant

vs

FRANK HULEN AND
WILMA LESNANSKY

Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

QUESTIONS PRESENTED

1. Does the sale of inherited and undivided interest in property for lein upon party's "interest therein" by State Judge conflict with State Statute,Partition in Kind 29-27-117, supporting right to partition on which party relies and render state statute invalid and repugnent to the constitution?

2.Is the sale of inherited and undivided interest in property of party for judgment or order without notification by State Judge valid?

3.Should Court of Appeals affirm District Court granting "absolute judicial immunity" to State Judge?

4.Should the Court of Appeals affirm the dismissals of complaints by District Judge when party has been denied appeal as a right in the amendment of Rule 5(a) Tennessee Rules of Appellate Procedure which allows State Judge to determine who can appeal?

5. If State Judge can sell party's "interest therein" property, is lawyer liable for protection of that "interest therein?"

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October Term, 1988

EARLENE POLYAK — Appellant

vs

FRANK HULEN AND WILMA LESNANSKY — Appellees

JURISDICTIONAL STATEMENT

Appellant-Plaintiff below is Earlene Polyak Appeal No. 87-6268, Middle District No.1:83-0083

Appellee-Defendants Frank Hulen and Wilma Lesnansky.

No.1:84-0083 is appealed out of this case. It is a final order and appealable as a right, and was consolidated with 87-6267 Frank Hulen and Wilma Lesnansky v Earlene Polyak only for the purpose of briefing in the Court of Appeals.

Companion cases:1:85-0125 Buford Evans & Sons v Earlene Polyak(Counter-claim) joined under 28 U.S.C. 1441(c) for removal to No.1:85-0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County;No. 1:85-0125 Earlene Polyak v Thomas Stack, Henry Henry & Stack;No 3:85X-105 Earlene Polyak v William Boston,Boston Bates & Holt and Re:Earlene Polyak 86-5536; 86-5460,and 86-5462.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit are set forth in Appendix A, and the opinions for the middle District Court are set forth in Appendix B. The opinions of the companions cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit dismissed June 16, and Rehear was denied on August 9, 1988.The Notice of Appeal to the Supreme court of the United States was filed on August 15, 1988, and this Jurisdictional Statement is filed within ninety days thereof.

Notice of appeal is taken pursuant to 28 U.S. C. 1254(2).

The jurisdiction of this Court is invoked pursuant to Article III Sec. 2, which states that the jurisdictial power of shall extend to all cases in law and equity, between a State and a citizen of another State; between citizens of States.

The federal and constitutional questions were timely raised in the conflict of interest and

failure of the Court to rescue in the denial of federal protection in denial of due process and depriviation of civil and constitutional rights and laws to the pro se litigant.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No... person shall be deprived of life, liberty; or property; without due process law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amen. V Cl 3&4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved....

U.S. Const. Amen. VII.

The pertinent portion of the Eight Amendment provides as follows:

> ... nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. Amend. VIII.

The pertinent portion of the Fourteenth Amendment is as follows:

> No Atate shall make or enforce any law which shall abridge the priveleges or immunities citizens of the United States;Nor shall any State deprive any person of life, liberty,or property without due process of law nor deny

any person within its jurisdiction the equal protection of its laws.

U.S. Const. Amend. XIV.

28 U.S.C. Any of the following civil acts commenced in a state court may be removed by defandant to a District Court.....

(1) Against any person who is denied or cannot enforce in the courte of such state a law providing for equal rights of citizens of the United States or all persons within its jurisdiction
(2) For any Act under color of authority deprives from any law providing for equal right

42 U.S.C. 1981:

All persons within jurisdiction of the United States shall have the same right in every state to make and enforce contracts, to sue, to the full and equal benefit of all laws.

42 U.S.C. 1982:

All citizens of the United States shall have the same right in every state,to inherit,hold purchase lease and convey...property.

42 U.S.C.1983:

Every person who under the color of any statute regulation, custom or usuage of any state...subject or caused to be subjected a citizen of the United States or other person within its jurisdiction thereto the dprivi-iation of rights and priveleges or immunities secured by the constitution and laws, shall be liable to the party in the action at at law in equity or some other proper proceeding for the parties.

28 U.S.C. 2403:

In any action, where the constitutionaly of a statute of that state affecting pub lic interest is drawn into question.

29-27-117:

If exact partition cannot be made without material injury to the parties or some one of them the commissioners may make the partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares.

RULE 3 TENNESSEE CODE ANNOTATED:

Appeal of final decisions are of right and lie to the court of appeals,Supreme Court.

RULE 54.02 TENNESSEE APPELLATE PROCEDURE:

If multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all parties is not enforceable or appealable...

RULE 5(a) AMENDED AUGUST 15, 1984(TRAP).

deleted the requirement that a Notice of appeal be filed with Court of Appeals.

Rule 60(b)FEDERAL RULES OF APPELLATE PROCEDURE:

Mistakes;inadventure;excusable Neglect; Newly discovered;evidence Fraud;
On such terms are just the court may relieve a party or his legal representative from final judgment,order, or proceeding.

Note:This brief is prepared with deference for the judicial system and the Honorable Judges and is necessary to name for clearity.

STATEMENT OF THE CASE

This is the fourth appeal dismissed in the docket control in the United States Court of Appeals,Sixth Circuit to affirm the conflict of interest and failure to rescue from pro se litigant's complaints by the Honorable Thomas A. Higgins in the United States District Court in Columbia Divison, Middle district of Tennessee.

This Supreme court can no longer sanction total denial of due process and depriviation of civil and constitutional rights and laws and the protection of state statute to pro se litigant in the sale of her properties without jury trial any compensation and appeal ever being heard in these lower courts.

The loss of Appellant's properties without jury trial to establish damages is an irreparable damage and the loss of a right to never regain in her retirement home(App.C.p.34-44).

These cases were dismissed while Appellant was in Coronary Unit waiting second by-pass surgery at the University of Alabama Hospital. The Motion for a continuance, physician's statements

and affidavit submitted to the Court were denied without **notification** on october 27,and cases dismissed on October 28, 1987(App. B.p.12).

The properties including travel trailer were sold on Robert Boston's invalid lein and judgment on appellant's **"interest therein"** secured district Court without **notification to pro se litigant** after October 28, 1987, and this sale if verified by advertisement(App.B. p.24).

Appellant has been denied **notification**,time, place and amount travel trailer and property. **Order of sale is being held without entering** at loss of appeal"and"right of redemption(App.Cp.38).

This appeal is taken for right to Partition in Kind Statute 29-27-117 in 87-6268, under diversity of citizenship for **jury trial.**

The companion cases all arise in Lawrence County and properties are located twenty-two miles south of new General Motors'"Saturn Plant".

On November 13, 1985,Honorable Thomas A Wiseman dismissed Appellant's complaint denial of due process and deprivation of civil,constitutional rights and laws in Buford Evans & Sons v Earlene Polyak 1:85-0120,in Earlene Polyak

v the Honorable Jim Hamilton and the Circuit Court of Lawrence County 1:85-0016 under 42 U.S. C.1983, and enjoined her from filing further cases in the United States district court.

Buford Evans & sons entered upon Appelant's property and conducted invalid survey and she was subjected without "**notification** to unfair and un just trial while acutely ill with heart problem and brochitis. Her husband brought her in back of car on pillows over thousand miles. Appellant asked for investigation85-0116.

In a letter to John P. Hehman, Clerk Court of Appeals on April 30, 1986, Judge stated,**That order was entered because of previous filings of Mrs Polyak against various persons in this Court...be severly sanctioned therefor"** She believes Judge referrs to Columbia Court(App C47)

The hand-drawn map, which Buford Evans alleges for defense Earlene Polyak v Thomas Stack Henry Henry & Stack 1:85-0125 showing property could be partitioned correlates Tract #3 with order prepared by Boston Bates & Holt Item #2, showing property could not be divided after Judge Hamilton verbally ordered property

sold within two hours at hearing while jury out on trial, information withheld and Appellant acutely ill from 102 degree temperature against nationwide warning to heart patients(App.Cp37).

This property was divided in settlement by agreement in 1976, and Appellant restored house on her agreed partition and maintained at her own own expense to date for retirement home(87-6268)

On December 19, 1983, attorney who represented family since 1976, and divided lolyalty to sue Appellant prepared **unappealable judgment** which Judge Hamilton instructed pro se litigant to appeal,and appeal Chancery 1974(83-405 II) dismissed in court of Appeals, Tennessee on April 26, 1984, as result of unappealable judgment...**appealed from is not a final appealable judgment under Rule 3** TRAP(App.C p. 38-45).

Judge wiseman denied filing Earlene Polyak v William Boston Boston Bates & Holt3:85X-108, but second complaint 1:86-0036 filed after Sanction without **notification** for defense by Judge Higgins on May 12, 1986.

On July 17, 1986, Judge Higgins granted one one day continuance stating that either party

could (Robert Boston)could open closed case, but Appellant would have to have a medical statment showing ability to participate and take part in litigantion. In addition to heart failure, she fell and required physical therapy and over(100) people died in heat-wave in South.

On September 24, 1987, Judge Higgins denied motion for disqualification submitted on September 18, 1986, without allowing five days for **notification** of objections and remanded Robert Boston's Order to sell property for invalid lein upon Appellant's "interest therein" to Chancery Court of Lawrence county 1:87-0075,Frank Hulen and Wilma Lesnansky v Earlene Polyak after holding over thirty days before entering. District Clerk's give all pro se identical style.

On October 28, 1987, Cases 1:84-0083;1-85-0082;1-85-0125;1-86-0036 and this case 1:85-0120 scheduled for status conference,but Appellant acutely ill and submitted motion for a continuance, affidavit,physicians statements, and telegram from Cardiac Unit University of Alabama, but three cases dismissed(App.C 19-23) Although Clerk denies telegram, Western Union

verifies receptionist at 11 Court signed.

On October 28, 1987, 1:84-0082; 1:84-0083 and 1:85-0120 dismissed with prejudice for failure to appear in Court. Case I:85-0125 later partial trial, and 1:86-0036 is pending.

On June 3, 1988, Judge Higgins dismissed jury trial before defense Thomas Stack Henry Henry & Stack took standor case going to jury. This case on appeal in court of appeals 88-5717.

On June 20, 1988, Appellant arrived in District Court with fourteen subpoenaed witneseess,but Jury trial was not held, and Magistrate conducted Final Pretrial Hearing wiht Robert Boston fillibustering all issues for defense and preparing Final Pre Trial Order.

After Judge Higgins continued bias to lawyers Appellant again asked for rescue. When Judge Higgins disregarded objections to pre trial order, she filed Writ of Mandamus 88-5884, which Court of Appeals denied.

Cases 85-5032/5101/5147(1:84-0083 and 84-6090(1:84-0082)(removed Chancery 1974 dismissed in docket control and rehear denied February 19, 1986 in court of Appeals, which preceded cases.

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATION

1. THE COURT OF APPEALS AFFIRMS THE DENIAL OF FEDERAL PROTECTION OF STATE STATUTE IN CONFLICT OF INTEREST AND FAILURE TO RESCUE FOR STATE JUDGE IN DISTRICT COURT "**IN COULD HAVE BEEN ORDER.**

The Court of Appeals affirms the denial of Appellant federal protection in denial of due process and depriviation of civil and constitutional rights and laws 42 U.S.C.1983 in conflict with Tennessee Statute 29-27-117 in **could have been order"** "instant lawsuits are clearly bared as they sought to relitigate issues that could have been fairly litigated in previous state Court ligigation("See order).

The court of Appeals affirms conflict of interest and failure to rescue by the Honorable Thomas A Higgins and further abuses discreation by issuing **Pro se Appellant's Brief,which appears to be Formia Pauperis**, which discrimin against Appellant's brief in paid One hundred five($105) docket fee. This pro se Appellant's brief confuses the issue in conflict of interest and refusal to rescue in District Court in 87-6267(1:84-0082) and 87-6268 (84-0083 and

85-5032/5101/5747(85-0083); 84-6090(84-0082).

On October 28, 1987, Judge Higgins dismissed 84-0082 and 84-0083 without jury trial and appeal ever being heard,and without any compensation for ten year investment in retirement home, while appellant was in Coronary Unit of University of Alabama Hospital.And with prejudice after she submitted motion for a continuance, physician's statement, affidavit and telegram from hospital bed.(App.

After cases dismissed, travel trailer and property sold for Appellant's "interest therin" The sale of this property without jury trial to determine damages is an irreparable damage and loss of a right to never be regained to her retiremnet home. this order has never been entered for appeal or "redemtion rights(App.

On November 13, 1985. the Honorable Thomas A iseman dismissed case 1:85-0116 granting State Judge **"Absolute judicial immunity"** and enjoined pro se litigant from filing further cases in District Court,and called for sanction against her in the Courts.She asked for investigation of sale of property in 1:85-0116,but

she has tried to appeal sanction without place time and date for defense in 85-6134 and 86-5536. Judge Higgins continues to sanction and Court of Appeals affirms by dismissal in docket control of all cases.She appeals 87-6268 for Partition in Kind 29-29-117 and **jury trial**.

The Court of appeals errs in disregarding due process and deprivia... of civil and constitutional rights and laws by State Judge in Chancery No. 1974(1:84-0082)(84-6090), which was removed to the District Court under 28 U.S.C. 1443. his property was initially ordered soldin verbal order at hurried hearing while jury out on trial within two hours, and Appellant acutely ill due th heat-wave 102 degrees and nationwide warning to heart patients

The court of Appeals affirms District Court support of State Judge order to sell in disregard that hand-drawn map by Buford Evans & Sons alleged for defense to show property could be partitioned in kind in equal value by Thomas Stack, Henry Henry & Stack correlates in Tract# 3, with order stating property could not be divided in Item # 2 prpeared by Boston Bates &

Holt (App. c

This order to sell did not award any Compensation for seven(7) years restoration and maintenance of retirement home and it was signed over Appellant's objections to Judge Hamilton and Thomas Stack and by William Boston. Cases, No. 1:85-0125 Earlene Polyak v Thomas Stack Henry Henry & Stack and 1:86-0036 Earlene Polyak v William boston boston Bates & Holt.

This appeal was dismissed in the Court of Appeals as pro se litigant appealed judgment denying New Trial as instructed by Judge Hamilton,which was prepare : by Boston Bates & Holt.Appeal dismissed on **unappealable judgment** Court of Appeals Tennessee on April 26, 1983 (App.

Appellant believes that . . **could have been** order rendered by the Court of Appeals in affirming denial of due process and depriviation of civil and constitutional rights and laws supported in Partition in Kind Statute on which Appellant relies invalid and repugn nt to to the Fifth,Seventh and Fourteenth Amendments.

Appellant relies upon settlement by agreement dividing property in Partition in Kind and severalty in 1976 supported by Statute.

> 29-27-117. If exact partition can not be made without material injury to parties, or some one of them...may make the partitions as nearly equal as they can and charge the larger shares with the sums necessary to equalize shares.Tennessee Code Annotated. 1932

Appellant relies upon statute for investment in agreed partition in kind and restoration for twelve years in retirement home.

> The Court may...in accordance with one or more of the cotenants, order an allotment of shares ...**kind and severalty,** and direct the sale of other portion if it is not susceptable to partition in kind. Vandenburg v Molder,4 Tenn.Civ. App. Higgins.

Appellant is in possession and maintains retirement home at her own expense to this day

Courts in almost all states

> Courts in almost all states in such circumstances have granted specific performance, Hagerty v Hagerty, Tenn. 172 259 (1919).

> Courts have said possession and making improvements constitutes :good consideration" in equity.Lindell v Lindell(1919) Tenn.135 368.

And"Parole partition of land followed by possession is binding and enforceable.Martin v.

Taylor, (1972) Tenn. 521 S.W. 2d 582.

2. THE COURT OF APPEALS AFFIRMS CONFLICT OF INTEREST AND FAILURE TO RESCUE IN DISTRICT COURT IN GRANTING ABSOLUTE JUDICIAL IMM_ UNITY TO STATE JU GE AND BARS CONSIDERAT- ATION OF PARTITION IN KIND AND SEVERALTY STATUTE WITHOUT PROOF OF FINAL ORDER.

The court of appeals affirms conflict of interest and failure to rescue without granting pro se litigant **jury trial** to determine damages in loss of properties without any compensation and grants State Judge Absolute judicial immunity without proof of final order in **could have been order** in dismissal and denial in docket control.

he United States District Court Judg dismissed all of pro se litigant's complaints regarding her property without hearing jury trial and the only case given partial hearing was dismissed before allowing to go to the jury.The Court of appeals affirms all of District Judge's dismissals in docket control

> Congress intended 1983 to be an independent protection for federal right and there is nothing to suggest that congress intended to extend the common law of "judicial immunity "to insulate state judge completely from federal review. United States v Dettroit, 200 US 321 26 S CT 283 50 L ed 499.

There has never been a final order in 1974 and Judge Wiseman dismissed 1:84-0082 for failure to state a claim after Appellant removed the case from Chancery Court.

Chancery No. 1974 was appealed to the Court of Appeals, Tennessee,but appeal was dismissed before briefs were ever considered on April 26, 1984.Appeal dismissed on **unappealable judgment** prepared by boston Bates & Holt, which Judge Hamilton instructed pro se litigant to get appeal in within ninety(90) days on December 19, 1983.Unappealable Judgment signed by Charles Holt and Jim Hamilton and appeal dismissed"**JUDGMENT FROM WHICH APPEAL IS SOUGHT IS NOT A FINAL JUDGMENT APPEALABLE AS A RIGHT UNDER Rule 3 TRAP**

Therefore the Court of appeals errs in order "Appellant seeks to relitigate issues conderning Tennessee property which were already the subj ject of a final state court judgment, and bares consideration of this appeal for res judicata.which conflicts with Rule 54.02 TRAP that unappealable order did not take care of all parties, is not final, and conflicts with

> Supreme court has stated it as "familiar law" that only final judgment is res judicata. G & Merriman v Saafield, 1916 241 US 22 28 S CT 477 60 L Ed 868.

The Court of Appeals affirms the District Court's denial of federal protection in the [illegible] granting absolute judicial immunity to State Judge and the dismissal of cases without jury trial the denial of due process and depriviation under color of usuage 1983.

> A STATE Court may not avoid deciding federal questions and thus defeat jurisdiction of the Supreme court of the United States by putting non-federal grounds of decision which were without any fair or substantial support. Wolfe v N.Y., 1960 80 S ct 1482 364 Us 177.

3. THE COURT OF APPEALS AFFIRMS CONFLICT OF APPEALS CONFLICT OF INTEREST AND FAILURE TO RESCUE IN DISTRICT COURT AND SHOULD HAVE GRANTED JURY TRIAL.

Appellant appeals 87-6268 for jury trial. This case is grounded in Partition in Kind and Severalty Sttute 29-27-117, which is supported by the Fifth Seventh and Fourteenth Amendments.

This Case 87-6268 Earlene Polyak v Frank Hulen and Wilma Lesnansky was taken under diverstiy of citizenship, and Appellant has ruled out res judicata with secreted dismissed

appeal, which Court of Appeals, Tennessee states is not a final order, but avoid the federal question of pro se litigant's right to jury trial to determine damages in the sale of her property without **notification.**

The Rules of Tennessee prohibit a party from Court. On August 15, 1984, Rule 5(a) was amended to delete the requirement that a copy notice of appeal be filed with Clerk court of Appeals. Appellant believes that this amendment allows State Judge to determine who can appeal. She believes that this amendment allows for discrimination against race ses, non-resident and pro se litigant.

Appellant believes that travel trailer sold on Robert Boston's order for invalid lein upon her"interest therein" submitted to Judge Hamilton on august 21, 1987.whithout **notification of sale, amount and to whom sold.**

Robert Boston obtained lein by submitting papers from 1974 and completed case in 1:84-0082, and again in 1:84-0083 as res judicata, andJudge Wiseman awarded costs ant attorney fees $1112.67, but court of appeals amended

to $850.01,but Robert Boston submitted lein for $1112.67, which he did not serve certificate of service or copy of lein to appellant. These charges for service are composes mainly of long distance calls to his father,William Boston, boston, Bates & Holt.

Appellant believes property sold and she has affidavit of party who saw add with her name in Advocate as stated in robert boston's order to sell. The initial order to sell was prepared by Boston Bates & Holt, signed by William Boston.

The order signed by William Boston was held from July 29, 1983 to October 19, 1983, before entering.

The Judgment was held from December 26, 1984 to August 7, 1985 before entering and Judge Hamilton denied motion to forward records for appeal sin amendment Rule 5 a) and at this time Appellant went to the District court.

The court of appeals bars consideration of discrimination against pro se litigant in failure of State Judge to order partition in kind pursuant to state statute.Judge Hamilton has

disregarded dismissed and denied all motions, petitions and applications submitted by pro se and has never ruled in her favor

On December 26, 1988, appellant found what appeard to be denial of her objections to the sale of her property in chancery Court on nonsuits in circuit Court file signed by Judge Hamilton on October 9, 1984. She did not appear in this court and was not in Lawrenceburg.

Court of Appeals disregards that appela to District court under 28 U.S.C. 1443 and two pronged withlocal bias and prejudice Johnson v Mississippi, 421 US 213 222(1975;Smith v Winter, 717 2d(5th Cir91975) and and local state Judge, Detroit Police Sgts. v Detroit,597 F 2d 568.

> The supreme Court has...recognized due process requirements are implicated whenever an enforcement power of a govrnment is employed to deprive an individual of an interest derived from common law in peaceful possession, Lindsey v Norbert, 405 US 56(1972) of real or personal property...whether the property is taken to meet a need or beenfit of an individual. the assurance of a fair hearing before "netural magistrate" who has no direct personal substantial interest in reaching a conclusion against him in his case. Tuney v Ohio, 273 US 510 523(1927).

CONCLUSION

Appellant seeks relief from the sale of her travel trailer and property wihtout notification, and she believe this order is being held without allowing appeal and right of redemption. She seeks jury trial for damages and the loss of a right to never be regained in her retirement home.

On the 5th day of October,1988.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37219.

_____

STATE OF MICHIGAN
COUNTY OF WAYNE

_____
NOTARY PUBLIC

My commission expires:____

APPENDIX A

In the United States Court of appeals for the Sixth circuit.

Earlene polyak v Frank Hulen and Wilma Lesnansky No. 87-6268(D.C. 1:84-0083 appealed out of and from Frank Hulen and Wilma Lesnansky v Earlene Polyak 87-6267(D.C. 1:84-0082). These cases were consolidated for briefing and oral argument, but oral argument was not heard and dismissed in docket control,June 16, 1988.

Petition for Rehear En Banc denied August 9, 1988.

Appeal Before: MILBURN GUY NORRIS Circuit Judges.

Rehear En Banc Before: MILBURN,GUY Circuit Judges

No. 87-6268(1:84-0083) is a final order and arises from complaint for Partition in Kind Tennessee Statute 29-27-117, which supports Appellant's right and interest in property and the Court of Appeals dismissal renders this statute invalid to the constituion.

No. 87-6267(84-0082) UNAPPEALABLE JUDGMENT.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

FRANK HULEN AND
WILMA LESNANSKY

FILED AUG 15 1988

Plaintiff-Appellees(87-6267)
Defendant-Appellant(87-6268)

v

EARLENE POLYAK

Plaintiff-Appellant (78-6268)
Defendant-Appellant (87-6267)

NOTICE OF APPEAL

Appellant gives notice of appeal to the affirming of conflict of interest and failure to rescue by the Honorable Thomas A Higgins in the United States Court of Appeals denial of petition for rehear en banc on August 9, 1988, to Supreme court of the United States. She appeals the denial of due process and deprivation of civil and constitutional rights and laws regarding the sale of her properties.

This property has been sold without any compensation,jury trial and appeal has never been heard in violation of Fifth Seventh and Fourteenth Amendments 28 U.S.C. 1443; 42 U.S.C. 1981;1982;and 1983. The Court of appeals continues sanction and enjoin on November 13,1985, by District court by pro se litigant for de-

fense of of constitutional rights and laws regarding property state statute and case laws.

Notice of Appeal taken under 28 U.S.C. 1254(2).

On the 10th day of August, 1988.

Respectfully submitted,

Signed Earlene Polyak
3179 Middleifled Drive
Trenton, Michigan 48183
(313) 676-3364

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN ET AL, FILED AUG 9 1988

Plaintiff-Appellees (89-6267)
Defendant-Appelless (87-6268)

v

EARLENE POLYAK

Plaintiff-Defendant (87-6268)
Defendant-Appellant (87-6267)

BEFORE: MILBURN GUY Cirduit Judges

The Court having received a petition for rehearing en banc and the petition having been circulated not only to to the original members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing the petition has beeen referred to the original panel.

The panel has further reviewed the petition for rehearing and consludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
Signed leonard Green

UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

FRANK HULEN AND
WILMA LESNANSKY FILED JUN 16 1988

Plaintiff-Appellant (87-6267)
Defendant-appellant (87-6268)

v

EARLENE POLYAK

Plaintiff-Appellant(87-6268)
Defendant-appellant(87-6267)

BEFORE: Milburn,Guy,and NORRIS Circuit Judges.

This pro se litigant appeals tow district court judgments dismissing two actions for failure to prosecute Fed.R.Civ. 41(b). Appellant has filed a motion to stay pending these appeals. Thesse cases have been referred to a panel of

ourt pursuant to Rule 9(a), rules of Sixth Circuit.Upon examination of the record and the briefs this panel unanaminously agrees that oral argument in not needed. Fed. R. 34(9)(a).

Upon review, we conclude that in these cases appellant seeks to relitigate issues concerning the partition of Tennessee property which were already the subject of a final state court judgment.Therefore, appellant's suit(87-6268 and the one she sought to remove to federal court(87-6227) are barred by principles of res-

judicata.

A federal court must afford the same res judicata effect to Tennessee state court judgments as would Tennessee Courts, 28 U.S.C. 1738 Miga v Warren City Dist.Bd of Educ. 465 US 75(1984);Whitfield v City of Knoxville,756 F 2d 455, 459(6th Cir 1985.Under Tennessee law the doctrine of re judicata will bar consideration of all claims which were or reasonalbly could have been litigated by the parties in state action. American Nt'l Bank & Trust Co v Clark, 586 S.W. 2d 826-27(Tenn. 1979);National Cordova Corp. v city of Memphis, 380 S.W. 2d 793, 798(Tenn.1964). Therefore, the instant lawsuits were clearly barred as they sought to relitigate issues which were or could have been fairly litigated in the previous state court litigantion.

Accordingly, we hereby deny the motion to stay and affirm the judgment of the district court.Rule 9(b)(5),Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman

for stay pending appeal. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

CASE NUMBER: 87-6267 and 87-6268
CASE NAME: EARLENE POLYAK V FRANK HULEN AND WILMA LESNANSKY:FRANK HULEN AND WILMA LESNANSKY V EARLENE POLYAK.

PRO SE APPELLANT'S BRIEF

DIRECTIONS: Answer the following questions about the appeal to the best of your ability, if necessary, use additional paper. You need not limit your brief soly to this form but you should be contains answers to the questions below. If you are asking for specific relief such as appointment of counsel, the provision of a transcript at government expense, or leave to proceed without prepayment of fees, please make that request at the conclusion of the brief. The Court prefers direct statements within 28 days you should return your completed brief to:

The Office of the Clerk
United States Court of Appeals, Sixth Circuit
524 Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

1. Did the District Court fail to consider important grounds for relief. Yes Brief pp. 2-4.

2. Did the District Court incorrectly decide the facts. Yes Brief pp. 4-7.

3. Do you think the District Court applied the wrong law. Yes Brief p. 7.

4. Do you feel there are other reasons why District Court's judgment was wrong. Yes Brief pp. 7-9.

5. What action do you want the Court to take in this case. Brief pp. 9-10.

6. Do you think the Court should hear oral argument in this case. Yes Brief p. 10.

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the 4th day of January, 1988.

Signed Earlene Polyak

Note: Appellant called Case Manager Court of appeals and found that specific relief of counsel; transcript;and proceed without payment is not available to pro se litigant's as stated in form.

APPENDIX B

In the United states District Court for the Middle district, Columbia Division, Nashville, Tennessee.

Motion for Disqualification from all of pro se litigant's cases submitted September 24, 1986,denied on September 24, 1987, and subsquently four cases dismissed by the Honorable Thomas A. Higgins.

No. 1:84-0083,Falene Polyak v Frank Hulen and Wilma Lesnansky.

No. 1:84-0082,FRank Hulen and Wilma Lesnanky v Earlene Polyak

Cases dismissed:October 28, 1987.

Notice of Appeals filed: November 13, 1987.

Presiding: the Honorable Thomas A Higgins.

Dismissed both cases without **oral argument** or **jury trial and appeal has never been heard.** Plaintiff was in the Coronary Unit of Universith of Alabama Hospital, and made every effort to reach Judge with a telegram from hospital , which was verified received by receptionist by Western Union.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILLED NOV13 1987
DEMAND JURY TRIAL

V

No.1:84-0083

FRANK HULEN AND
WILMA LESNANSKY

NOTICE OF APPEAL

Appellant gives notice of appeal to the order dismissing above action with conflict of interest and failure to rescue November 4,1987, and to the United States Court of Appeals.She made every effort to notify the Honorable Thomas A Higgins that she was unable to attend status conference scheduled on October 28,1987,due to heart problem with medical statements,affidavit and telegram on October 27, 18987,from Cardiac Unit of University of Alabama"motion for continuance nos 84-0082 84-0083 85 0120 85-0125 86-0036 STILL IN CORONARY UNIT OF HOSPITAL," verified received by Western Union at 11 am 10-27-87.

Appellant contends that status conference in her absence will result in sale of properties at Public auction without jury trial and just compensation,and she has been denied due pro-

cess and deprived of civil and constitutional rights and laws,which will result in irreparable damage and loss of a right to never be regained in retirement home. She requests set aside of record in action,dismissal prejudice order and reinstate jury trial.

On the 10th day of November,1987.

Signed Earlene Polyak
4063 Hood Road
Lake Park, Florida
33410
(305) 627-3564

Certificate of Service

I certify that a true copy of this pleading has been mailed to United States Court of appeals Cincinnati,Ohio 45202,Richard Boston 2100 One Commerce Place, Nashville Tennessee 37219

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED NOV 4 1987

v No. 1:84-0083

FRANK HULEN ET AL

ORDER

For reasons on the record at the hearing held in this action on October 28, 1987, this action is dismissed with prejudice for failure of the plaintiff to attend status conference as required by the order entered September 29, 1987, and her failure to procesute.

Signed by Thomas A Higgins

11-27-87

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED OCT 27 1988

No.1:84-0083

v

FRANK HULEN ET AL

ORDER

The court has set a status conference in this action for October 28, 1987. A status conference is deemed necessary to bring some sense of mamagement to thil litigation.The Plaintiff seeks continuance pleading health problems. After reviewing the plainfiff's submissions in support of her motion for a continuance, it does not appear that the Plaintiff's health would be subjected to any undue burden by her being required to attend a status conference.

Accordingly, the plaintiff's motion to continue the status conference is denied

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN AND
WILMA LESNANAKY

v

EARLENE POLYAK
(COUNTER-CLAIM)

FILED NOV 13 1887

DEMAND JURY TRIAL
1:84-0082

NOTICE OF APPEAL

Appellant gives notice of appeal to the order dismissing the above action with conflict of interest and failure to rescue on November 4, 1987 to the United States Copurt of Appeals.She made every effort to notify the Honorable Thomas A Higgins that she would be unable to attend status conference scheduled October 28, 1987, due to heart problem with medical statement, affidavit and telegram from the University of Alabama Cardiac Unit"request continuance 84-0082 84-0083 85-0120 86-0036 85-0125 STILL IN CORO NARY UNIT OF HOSPITAL." verified received by Western Union on 10-27-87.

Appellant contends that a status conference in her absence will result in the sale of her properties without a jury trial at Public Auction and without any compensation,and that she has been denied due process and deprived of civil and constitutional rights and laws,irre-

parable damage in the loss of a right to never be regained in retirement home.She requests set aside of record of action , dismissal, prejudice order and reinstate jury trial.

On the 10th day of November,1987.

Respectfully submitted,

signed Earlene polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this plead ing has been mailed to the United States Court of appelas Cincinnati, Ohio 45202 Richard 2100 One Commerce Place,Nashville, Tennessee 37217.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL FILED NOV 4 1987

v No. 1:84-0082

EARLENE POLYAK

ORDER

For the reasons stated in the record at the hearing held in this action on October 28, 1987, this action is dismissed with prejudice for failure of the plaintiff Earlene Polyak to attend status conference as required by the order entered September 29, 1987, and for her failure to prosecute.

It is so ordered.

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL FILED OCT 27 1987

v 1:84-0082

EARLENE POLYAK

ORDER

The court has set a status conference in this action for ocetober 28, 1987. A status conference is nescessary to bring some sense of management to this litigation.The plaintiff seeks a continuance of the status conference pleading health problems. After reviewing the plaintiff's submissions in support of her motion for a continuance, it does not appear that the plaintiff's health would be subjected to any undue burden by her having to attend a status conference.

Accordingly, the plaintiff's motion to continue the status conference is denied.

signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN AND
WILMA LESNANSKY

FILED JAN 1988
JURY TRIAL DEMANDED

V

!:84-0083 & 1:84-0082

EARLENE POLYAK
(COMPLAINT & COUNTER CLAIM

MOTION TO SET ASIDE
ATTORNEY COSTS AND FEES

Appellant moves that attorney fees and costs awarded Robert boston on January 9, 1985 be set aside pursuant to rule 25 FRAP. A certificate of Service must accompany the submission of any document to court of appeals. Robert Boston submitted costs and attorney fees awarded in 1:84-0083(85-5032) in this case in Court of Appeals but certificate of service has never been served to allow objections to$1112.67 used in lein on Appellant's"**interest therein**" used in order to sell property on August 21, 1987.

On the 30th day of December,1987.

Signed Earlene Polyak(305) 627-3564
4063 Hood Rd. Lake Park, Florida33410

CErtificate of Service

I certify that a true copy has been mailed to Robert Boston 2100 One commerce Place,Nashville Tennessee 37219,Court of Appeals Cincinnati,Ohio

Signed Earlene Polyak

October 16, 1987 To Dr. Kirkland, University Cardiac, University of Alabama

RE: Earlene Polyak

Dear Sir:

Please examine and treat Earlene Polyak, who has disabled angina, and had previous bypass.

If you would like more information regarding this patient, please feel free to contact Dr. N. Gupta, Cardiologist at (313) 676-8400.

Thank you very much for seeing this patient.

Sincerely,

Delfin F. Santos, MD

ap

DELFIN SANTOS, M.D.
P. O. Box 366
Flat Rock, MI 48134
(313) 782-3654

ctober 12, 1987

e: Earlene Polyak

Patient is not allowed to do anything

treneous due to multiple coronary bypass

urgery.

igned by
elfin F. Santos, M.D.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE: EARLENE POLYAK FILLED OCT 21 1987

AFFIDAVIT

Earlene Polyak deposes and says:

That she was hospitalized on or about the first of September, again on the first of November, and has received emergency treatments since these hospitalizations. Dr. Delfin Santos, Family physician and Dr. N. Gupta , Cardiologist insist that emergency treatment is necessary for reoccuring heart condition, and arrangements have been made for treatment.

Dr. Santos signed statement on November 12, 1987, stating that Earlene Polyak, patient is not allowed to do anything streneous due to multiple coronary bypass surgery (Exs. enclosed).

In view of the above, Affiant moves for a continuance in the status reports scheduled on October 28, 1987 due to the unnecessary

burden that an appearance in Court would place on her health at this time.

Affiant requests a continuance from October 28, 1987 to continue her complaint for jury trials in the attached cases. She believes that local influence and prejudice have contributed to her inability to get defense as a non-resident in these cases, and she needs additional time to seek legal representation.

Affiant believes that she should receive federal protection as a pro se litigant and given due process and that she not be denied civil and constitutional rights and laws.

On the 19th day of October, 1987.

_____

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

Signed Enid Hammond
NOTARY PUBLIC

My Commission Expires: April 14, 1990

WESTERN UNION MAILGRAM

MAILOGRAM SERVICE CENTER
Middletown, Va 22645

EARLENE POLYAK
4063 Hood Road Lake Prk Fl 33418

YOUR TELEGRAM OF 10-27 tO JUDGE THOMAS HIGGINS

WAS DELIVERED PM 10-27 SIGNED BY RECPTIONIST.

THANK YOU USING OUR SERVICE.

13022 HOLLENBERG BRIDGETON MO 63044

15:24 EST

MGMCOMP

Telegram message.

MOTION FOR CONTINUANCE NO. 1:84-0082, 1:84-0083, 1:85-0120, 1:85-0125, 1:86-0036.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK No. 1:85-0125

v

THOMAS STACK AND FILED: June 21, 1988
HENRY HENRY & STACK

AFFIDAVIT

To whom it may concern;

My name is Mary Mitchell. I live at R #3 Box 63B Lawrenceburg, Tennessee 38464.

On or about Sept. thru Nov. of 1987, I was reading my newspaper the Lawrence County Advocate, when a familiar name caught my eye. The name of that person was Earlene Polyak. Realizing I had met her on about 3 occasions in the past, I read more, out of curosity. The contents of the article was non-resident of some sort. The content of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondence in which I last received from Earlene Polyak some years ago. She had revealed to me that she own a mobile home situated on some property

here in Lawrence County, TN. Upon meeting her again some 6 months after I had read the article, I casually mentioned it to her, at this time, she informed that she knew nothing of this.

This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

My commission expires: August 8, 1988

Signed Mabel Evelyn Hedgepath, Notary Public

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Re: EARLENE POLYAK FILLED SEPT 24 1986

The Honorable Thomas A. Higgins
1:85-0125, 1:86-0036

MOTION TO DISQUALIFY

Plaintiff Earlene Polyak, moves that the Honorable Thomas Higgins disqualify in the above styled cases and motions. She would like to express respect and regrets she feels obligated to make this request. But it appears that Judge has been misinformed about Plaintiff, and she believes Judge's orders reflect the prejudice, which prejudices the administration of Justice in her cases.

Plaintiff moves that Clerk reassign her cases to a District Judge, who might be more tolerant of her unavoidable health problems, in helping her get her cause before the Court, and of the **pro se litigant**.

On the 18th day of September, 1986.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

Re: EARLENE POLYAK FILLED SEPT 24 1986

The Honorable Thomas A. Wiseman
1:85-0125, 1:86-0036

MEMORANDUM

The Honorable Thomas A. Higgins resumed the proceedings in Case No. 1:86-0036, after the Honorable Thomas A. Wiseman enjoined on May 2, 1986. Judge Higgins disregarded Plaintiff's appeal of Judge Wiseman's order of November 13, 1985, in which Judge enjoined her from filing further cases in District No. 1:85-0116 Earlene Polyak v Jim T. Hamilton and the Circuit Court of Lawrence County and appeal of Judge Wiseman's order, and pronounced her guilty before either case was heard.

Judge Higgins filed No. 1:86-0036, Earlene Polyak v William Boston Boston Bates & Holt. In his order, Earlene Polyak has

filed a number of previous actions related to the partition of certain property in Lawrence county, Tennessee. For reasons stated in the memorandum filed November 13, 1985, and the order entered in Civil Docket No. 1:85-0116... Judge Wiseman found that Earlene Polyak was guilty of abusing the process of the Court and enjoined her from filing further actions in the Court..."Plaintiff believes that this order was prepared by Clerk as Judge Wiseman was duck hunting" at this time. She submitted amended order leaving out guilty which had been used two times in the order on June 12, 1986. Judge Higgins disregarded these motions.

Plaintiff understands pro se litigant is exempt from pre-trial conferences under local Rule 11.2, and did not expect to go to the District Court in Nashville. She had recently worn heart monitor for heart problem and was suffering from injuries from fall which required additional therapy. Pre trial

-38
Delfin F. Santos, M.D.
P.O. BOX 366
FLAT ROCK, MICHIGAN 48134
TELEPHONE (313) 782-3654

October 16, 1987

RE: Earlene Polyak

Dear Sir:

Please examine and treat Earlene Polyak, who has disabled angina, and had previous by-pass.

If you would like more information regarding this patient, please feel free to contact Dr. N. Gupta, Cardiologist at (313) 676-8400.

Thank you very much for seeing this patient.

Sincerely,

Delfin F Santos, MD

ap

conference scheduled by Robert Boston's motion. She tried to explain to the Court she could not walk and had been in and out of bed for two weeks. Judge Higgin's secretary stated Judge said she could submit motion for health problem. Plaintiff requested hearing in October, over one hundred (100) people died in heat wave on July 1, 1986. Motion grounded in extreme burden going to Court would place upon her health.

Plaintiff learned from call to Court that Motion for Continuance, Motion to join claims, Motion to serve summons were misplaced. She put tracers on mail. Sent copy of Motions by express mail, called lawyers to prevent inconvenience and finally resorted to telegram to Judge Higgins. Motions were allegedly found in another office about 11:00 a.m. on July 1, 1986 after Plaintiff made every effort to prevent pretrial from being held in her absence.

Although Judge appeared to grant continuance, only one day and issued Order on July 17, 1986, in preferred treatment for Robert Boston "the Clerk is directed to close the case administratively to be reopened upon motion and showing good causes by either party." However, any motion by Plaintiff to reinstate this action on the active docket shall be supported with medical certificate establishing her physical ability to appear in Court and participate in litigation.

"The Court has received correspondence and telegram from Plaintiff addressed directly to undersigned. The Plaintiff is directed to address all pleadings to the Clerk." Richard Boston hand delivers to the Judge.

The clerk is directed not to accept for filing any document that does not bear the caption docket of action pending in this Court. "Clerk returned appeal to Judge Wiseman's order with red mark around.

Judge Higgins alleges Plaintiff's complaint incoherent in many respects." Plaintiff has always tried to qualify that she does not have any knowledge or expertise in the legal profession. She did not expect to be judged professionally by professional standards, and that the purpose of the Courts was to meet the needs of the people including pro se litigant.

On the 18th day of September, 1986.

Respectfully submitted,

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a copy of this pleading has been mailed to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 27219, and Thomas Stack, Henry Henry & Stack, 119 South First Street, Pulaski, Tennessee 37204.

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FILLED SEPT 30 1987

EARLENE POLYAK No. 1:85-0125

v Hon. Thomas Higgins

THOMAS STACK
HENRY HENRY & STACK

MOTION FOR RECONSIDERATION
OF DENIAL OF DISQUALIFICATION

Plaintiff, pursuant to 28 U.S.C. 1441, moves for reconsideration of denial of Motion to Disqualify on September 24, 1987. Motion was timely submitted on September 18, 1986. It is stated in the Rules of the Supreme Court...making due allowance for any case presented...by person appearing pro se.

Mrs. Betty Harris made a mistake on (p. 3) memorandum as Motion to Schedle Jury Trial of Reassigned case was filed with her initials on March 9, 1987. Only Rehear appealed 85-5195.

Mrs. Harris makes another mistake as it plainly stated in memorandum that Motion for

Continuance on July 1, 1986 was grounded in extreme burden going to Court would place upon her health. Over one hundred people (100) died in heat wave, but plaintiff was lucky only hospitalized.

Plaintiff believes that Judge Higgins has a personal bias against her and in favor of adverse party. She moves that all of her cases and motions be reassignhed to another Judge.

On the 28th day of September, 1987.

Respectfully submitted,

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to Mr. Michael Cain, 29 Public Square, Columbia, Tennessee 38204.

Signed Earlene Polyak

This motion is still pending and disregarded by Judge Higgins when the Judge conducted trial on May 31, 1988. Judge again

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the Answer therto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

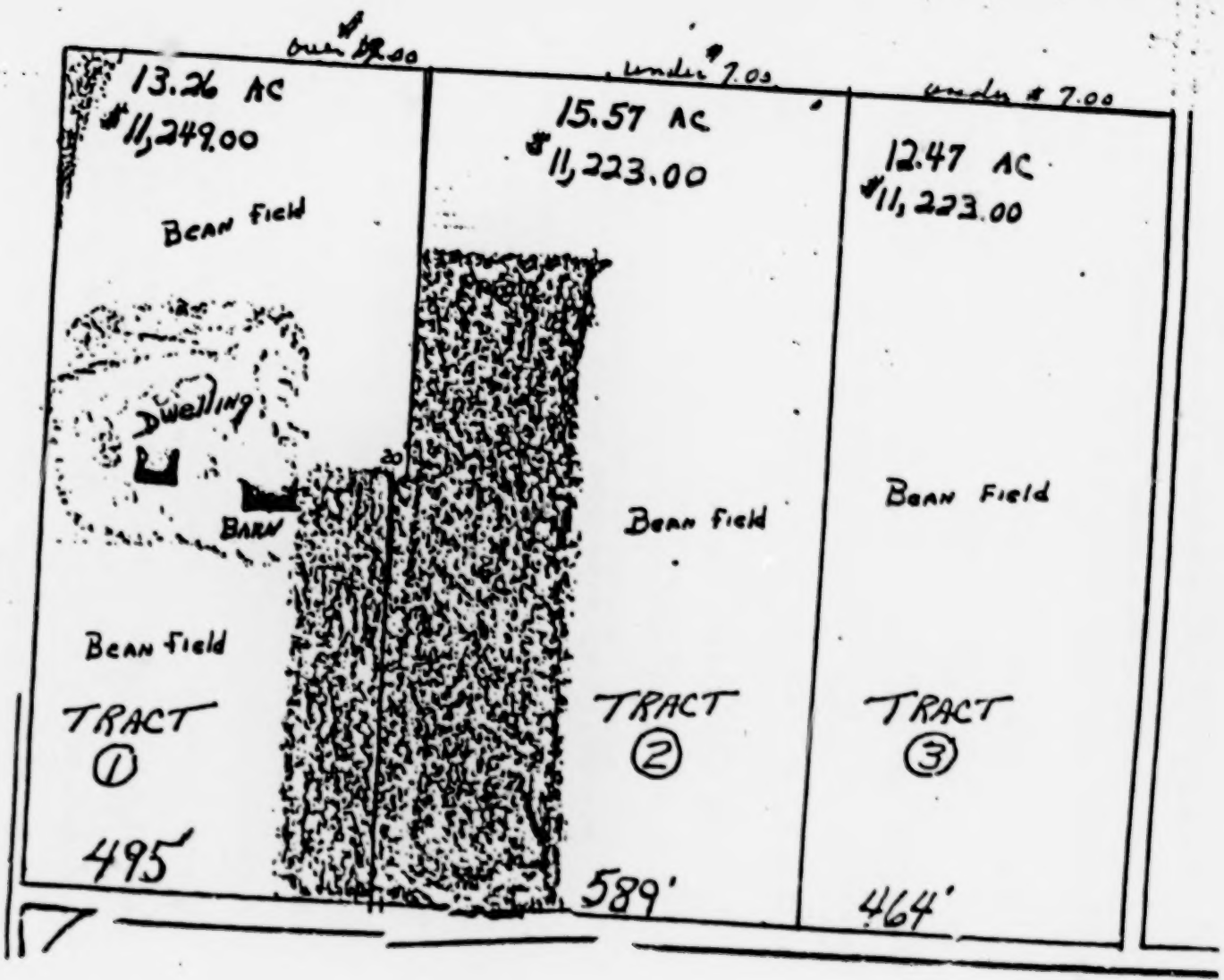
All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack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CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

NO ENTRY DATE
Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this _____ day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497-499 by Geneva Frisbee. This lein for

undisclosed amount. Lein placed by Robert Boston, January 22, 1985, Note Book 19, p. 280, Lein Book 7, p. 542 for $1,112.76.

Mr. Boston's cost and attorney fees were corrected in Court of Appeals to $850.01. Mr. Boston did not serve Appellant with a copy of costs for objections. Costs presented in District Court composed mostly of long distance telephone calls to this father, William Boston.

IN THE COURT OF APPEALS OF TENNESSEE

FRANK HULEN AND WILMA LESNANSKY
Plaintiff-Appellees

ENTERED APRIL26 1984

Lawrence Equity

v

EARLENE POLYAK
Defendant-Appellant

ORDER

On March 20, 1984, an order was entered by this Court granting a rehearing in respect to the order entered on March 2, 1984, dismissing appeal for failure to timely file a

Notice of Appeal with the Trial Clerk; the parties have filed briefs for rehearing;

And it appearing from the record that Appellant's Motion to Alter or Amend was heard on December 19, 1983 that on January 3, 1984, Appellant filed a Notice of Appeal from the final judgment entered on December 20, 1983, but that the order overruling Appellant's Motion to Alter or Amend was not entered until January 10, 1984;

And it further appearing that this situation is governed by TRAP Rules 4(b) and 21(b) which read as follows:

> Rule 4(b) Termination by Specified timely motion in civil actions--in civil action if a timely motion under TRCP is filed in the trial court by any party: (1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact; (3) under Rule 59.03 to alter or amend judgment; or, (4) under Rule 59.01 for a new trial, the time for appeals for all parties shall run from the entry of the order denying a new trial or granting or denying any such motion. A Notice of Appeal filed before the filing or disposition of any of the above motions shall have no effect. The party making the motion after Notice of Appeals is filed shall move in trial court for an

order dismissing appeal. A copy of the order of dismissal by the trial court shall be filed by the moving party with the Clerk of the Appellate Court. A new Notice of Appeal must be filed within the prescribed time measured from the order disposing of motion as provided above.

Rule 21(b) Extension of time--For good cause shown the Appellate Court may enlarge the time prescribed by these rules or by its order for doing any act, or may permit any act to be done after the expiration of such time; but the court may not enlarge the time for filing a Notice of Appeal prescriber in Rule 4, and application for permission for appeal prescribed in Rule 11, or a Petition for Review prescribed in Rule 12.

And it further appearing from that judgment from which appeal is sought is not a final judgment appealable as a right under TRAP Rule 3...

It is therefore ordered that this appeal be and is hereby dismissed at the cost to the Appellant...

ENTERED April 26, 1984

Signed
Judge Henry F. Todd
Judge Samuel L. Lewis
Judge Ben H. Cantrell
Judge Lewis H. Conner

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

PLAINTIFF

V CICIL ACTION NO. 1974

EARLENE POLYAK

DEFENDANT

JUDGMENT

This cause came on to be heard on this the 19 day of December 1983, before the honorable jim T. Hamilton, Judge upon the motion this day filed by the defendant, personally in her own behalf, state and argument of the Defendant, personally from all which the Court finds there to be no merit, and said motion is here and now overruled

This the 19th day of December, 1983.

Signed Jim T. Hamilton

JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of this pleading has been served upon the defendantat interest in this cause by delivering a true and exact copy...I addressed to said counsel at his office with sufficient postage...

The 19th day of December 1983.
BOSTON BATES & HOLT
Signed Charles Holt

Entered Dec. 19, 1983
Book page 294

COURT OF APPEALS
STATE OF TENNESSEE

September 9,1985

Dear Counsel:

An amendment to Rule 5(a) of the Tennessee of Rules of appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeals be filed with the Clerk of the Appeellete Court.

Signed Ramsey Leathers
CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

April 30, 1986

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re: Case No. 86-5462
Mrs. Polyak Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a Complaint for Mrs. Polyak against William E. Boston. I have not previously acted upon this Complaint because I was considering

the issuance of a show cause order upon Mrs. Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs. Polyak was enjoined from filing any further suits in this Court arising out of the partition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs. Polyak against various persons in this Court, all stating essentially the same facts, and arising out of State Court proceedings which had been fully litigated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitons for Writ of Mandamus received today. She has taken an inordinate amount of this Court's time to the determint of the litigants and should be severely sanctioned therefore.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,
Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases, and cases are handled by William Bostson, Boston Bates & Holt, and Thomas Stack Henry Henry & Stack (Buford Evans was retained by these lawyers). The petitions for Writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.